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213361

February 18, 2005

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Docket No. 42084
CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and
Kaneb Pipe Line Operating Partnership, L.P.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of the Public Version of the Response of Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. to CF Industries, Inc.'s Supplemental Brief. The confidential material included in the Confidential Response, which is being filed simultaneously, has been redacted. Copies of the Public Version of the Response also are included on the enclosed CD-ROM.

Please date stamp the duplicate copies of this filing and return them to our messenger. Thank you for your assistance in this matter.

Sincerely,

Kathrine L. Henry

Kathrine L. Henry

Enclosures

213361

PUBLIC – CONFIDENTIAL MATERIAL REDACTED

FEB 18 2005 RECEIVED

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD

CF INDUSTRIES, INC., Complainant,	)	
v.	)	
KANEB PIPE LINE PARTNERS, L.P.,	)	Docket No. 42084
and	)	
KANEB PIPE LINE OPERATING PARTNERSHIP, L.P., Defendants.	)	

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**RESPONSE OF KANEB PIPE LINE PARTNERS, L.P.
AND KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.
TO CF INDUSTRIES, INC.'S SUPPLEMENTAL BRIEF**

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PARTNERS, L.P. AND KANEB PIPE LINE
OPERATING PARTNERSHIP, L.P.

Dated: February 18, 2005

PUBLIC – CONFIDENTIAL MATERIAL REDACTED

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD

CF INDUSTRIES, INC.,	)	
Complainant,	)	
	)	
v.	)	
	)	
KANEB PIPE LINE PARTNERS, L.P.,	)	**Docket No. 42084**
	)	
and	)	
	)	
KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.,	)	
Defendants.	)	

RESPONSE OF KANEB PIPE LINE PARTNERS, L.P.
AND KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.
TO CF INDUSTRIES, INC.'S SUPPLEMENTAL BRIEF

Pursuant to the Board's order granting the joint motion of Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, "Kaneb") and CF Industries, Inc. ("CFI") for permission to file supplemental briefs in this proceeding,[1] Kaneb hereby submits its Response to CFI's Supplemental Brief.

I. INTRODUCTION

When deciding whether to lift a rate prescription, the Board must determine whether the "factual and legal underpinnings of the original prescription continue to have current validity."[2]

1 CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P., STB Docket No. 42084 (STB served January 27, 2005).

2 San Antonio, Texas v. Burlington Northern, Inc., 364 I.C.C. 887 (1981), 1981 ICC LEXIS 78, at *20-21; Arizona Public Service Co. v. Burlington N. & Santa Fe Ry. Co., STB Docket No. 41185, slip op. at 6 (STB served May 12, 2003).

In its August 11, 2004 Order in this proceeding, the Board recognized that Kaneb's capital investment in the pipeline may be different from Koch's.[3] The Board further stated that, because Kaneb did not indicate (a) what assets were encompassed in the $140 million purchase price, (b) how much of the purchase price was attributable to the pipeline itself, and (c) what Kaneb's relationship, if any, was with Koch, it could not determine on the then-existing record whether or how Kaneb's purchase price affected the factual underpinnings of the Koch prescription.[4] The Board therefore directed Kaneb to submit a verified statement including certain specific information to support its claim of materially changed circumstances.[5] Kaneb submitted all of the information that the Board stated it needed to determine whether to lift the prescription. That information demonstrates that Kaneb's new acquisition cost materially changes the factual underpinnings of the Koch prescription and therefore warrants vacating the prescription. CFI has not disputed any of that information.[6]

CFI submitted extensive discovery requests to Kaneb, most of which requested information that is totally irrelevant to the issue before the Board. Nevertheless, in view of the fact that this issue has been pending for eighteen months, during which time Kaneb has been precluded from earning a reasonable return on its investment in the pipeline and CFI has enjoyed an unfair advantage over other shippers by continuing to pay 17-year-old rates, and in an effort to bring this proceeding to a close as quickly as possible, Kaneb has been extremely cooperative

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[3] CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P., STB Docket No. 42084, slip op. at 3 (STB served August 12, 2004) ("August 11 Decision").

[4] August 11 Decision at 4. The prescription was imposed by the Board in CF Industries, Inc. v. Koch Pipeline Company, L.P., 4 S.T.B. 637 (2000) ("Koch"), aff'd sub nom. CF Industries, Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001).

[5] Specifically, the Board directed Kaneb to submit "a list of assets Kaneb purchased from Koch and an itemized valuation of those assets; a comparison to the assets that the Board examined in Koch; the complete Koch/Kaneb asset purchase and sale agreement; a statement setting forth facts sufficient to establish whether or not this was an arm's length transaction; and any other information relevant to its claim of materially changed circumstances." August 11 Decision at 4.

[6] Intervenor Dyno Nobel also did not dispute Kaneb's evidence.

and forthcoming in answering those requests. As Kaneb expected, CFI has not used any of the information provided in discovery to dispute the evidence the Board requested and received from Kaneb regarding the pipeline purchase. Indeed, CFI did not even attempt to obtain discovery regarding the information submitted by Kaneb which the Board stated was necessary for its determination.

Following its futile and irrelevant discovery exercise, in its final pleading CFI has decided to float one last desperate idea. Since it is undisputed that Kaneb's acquisition cost is materially different from Koch's, CFI now asserts that the Board should establish a new rule in the final stage of this proceeding, contrary to its long-standing policy of using acquisition cost as the measure of a carrier's capital investment, and instead use "book costs" to set the investment base. The Board must reject this request. The standard for lifting a rate prescription is whether there has been a material change in circumstances. Kaneb used the Board's existing policy to prove a material, undisputed change in the investment base for the pipeline, and CFI's response, since it has no basis on which to dispute Kaneb's evidence, is to argue that the Board should change its policy.

CFI's position boils down to the bare assertion that if a carrier is able to meet the standard for lifting a prescription and show materially changed circumstances, the Board should change the rules so that the carrier will fail to meet the standard. In addition, CFI has not presented any valid reasons for changing the Board's existing policy. The Board has already thoroughly considered and rejected the arguments made by CFI in the context of setting the existing policy and has correctly determined that a carrier's acquisition cost is the appropriate measure of that carrier's investment base. Moreover, even assuming CFI had presented any new, valid reasons for the radical change it advocates, this is not the proper forum for making such a major change to Board policy. Kaneb has properly relied on the Board's existing policy, which was the basis for the Koch decision, and it would be inequitable for the Board to change its policy at this juncture. Finally, although CFI indicates that such a policy change should be limited, for some unarticulated reason, to ammonia pipelines, in fact such a change would have far-reaching implications for other carriers subject to the Board's jurisdiction and therefore should not be made without input from all carriers in a rulemaking proceeding.

CFI has had more than an adequate opportunity to respond to Kaneb's request to lift the prescription in this case and has utterly failed to rebut the clear showing by Kaneb that the factual underpinnings of the Koch prescription are no longer valid. It is time for the Board to lift the prescription and restore ratemaking initiative to Kaneb.

II. ARGUMENT

A. The Board Must Reject CFI's Request to Establish a New Generally Applicable Rule for Establishing Investment Base.

CFI asserts that the Board should change its long-standing policy of using acquisition cost to set the investment base when conducting a revenue adequacy review. Specifically, CFI argues that, for ammonia pipelines, the Board should set the investment base using the lower of the purchase price or "book costs" if the pipeline is market dominant.[7] CFI states that such an approach will ensure that an investor will assume the risks associated with a decision to pay more than book value.[8] This inappropriate request by CFI at this late stage of the proceedings is merely an attempt to distract the Board from the fact that CFI does not dispute that there has been a material change in circumstances that affects the factual underpinnings of the Koch prescription and warrants lifting the prescription. CFI implicitly concedes that, by using

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7 CFI Supplemental Brief at 5.

8 CFI Supplemental Brief at 5.

acquisition cost as the measure of investment base, as the Board did in Koch and has since 1988, Kaneb has supported its claim of materially changed circumstances. CFI's request to change that measure must be rejected.

At the outset, Kaneb notes that, contrary to CFI's assertion, the "only issue" in this proceeding is not whether the pipeline is revenue adequate. This is not a rate reasonableness review proceeding using the revenue adequacy constraint. That aside, CFI's proposal of a new rule suffers from a number of flaws. For example, CFI has not defined "book costs." Kaneb assumes from the Supplemental Verified Statement of Mr. Carlton, CFI's witness, that CFI defines "book costs" as Koch's book value.[9] Even assuming, arguendo, that the use of "book costs" were correct, CFI has offered no justification for using Koch's book value, as opposed to using Kaneb's book value or the original cost of installing the pipeline facilities. Moreover, CFI appears to use market dominance, which is not at issue here, as a screen to determine whether the existing rule or CFI's proposal should be applied.[10] Of course, if a pipeline does not have market dominance, the Board will not review the cost basis for its rates at all.

More importantly, the Board and its predecessor agency, the Interstate Commerce Commission ("ICC"), have been using acquisition cost to set investment base in their revenue adequacy determinations for almost seventeen years, and CFI has not demonstrated why the Board should change that policy. In its 1988 Railroad Revenue Adequacy Determination, the

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9 In its response to Kaneb's opening evidence, CFI referred to these costs as "predecessor investment costs." In its rebuttal, Kaneb correctly pointed out that these costs were not predecessor costs but in reality were Koch's book costs which reflected its acquisition price. In its Supplemental Brief, CFI is now referring to these costs as "book costs." To be clear, the costs referred to by CFI as "book costs" are not predecessor costs, nor are they book costs that are derived based on the original cost to Gulf Central when the pipeline was initially constructed and placed into jurisdictional service. Instead, they are based on Koch's purchase price for these assets. See CF Industries, Inc. v. STB, 255 F.3d 816, 828 n.19 (D.C. Cir. 2001) (stating that "original" or "predecessor" cost "represents the cost of the asset when it was first dedicated to public service, plus any subsequent improvements, less depreciation and retirements.").

10 CFI states that in this proceeding "no party is challenging the Board's original finding that the pipeline is market dominant." CFI Supplemental Brief at 3. However, because this is not a rate proceeding, no evidence on market dominance has been presented. Indeed, the Board did not request, and Kaneb did not submit, such evidence.

ICC—after seeking comments from interested parties—adopted this policy and declared that it would henceforward use acquisition costs in valuing railroad investment bases.[11] Previously, the ICC had used original costs (i.e., predecessor costs) to establish investment base.[12] In establishing the use of acquisition cost in subsequent cases, the ICC stated that acquisition cost represents the fair market value of an asset as established by the purchase price.[13] The ICC found that the use of acquisition costs comports with generally accepted accounting principles ("GAAP"), and is consistent with the underlying objectives of a revenue adequacy analysis.[14] The ICC further stated that because the acquisition cost reflects a new valuation base for the acquired asset, "it can be either higher or lower than the previously recorded value."[15] Finally, the ICC noted that in cases where assets are sold for more than book value, the continued use of predecessor cost "would potentially shortchange those recent investors who have paid a premium above the old book value with a return below the cost of capital for their investment."[16] The ICC did not create two separate rules for when the purchase price is higher or lower than the predecessor's cost, and there is no reason for the Board to do so here, as CFI advocates.

There have been no instances—and CFI cites no cases—since the 1988 change in policy in which the Board or its predecessor agency departed from this policy and applied outdated predecessor book value as a valid investment. The Board's use of acquisition cost valuation has

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11 Railroad Revenue Adequacy – 1988 Determination, STB Ex Parte No. 483, 6 I.C.C. 2d 933 (1990), 1990 ICC LEXIS 247, at *15 ("1988 Railroad Revenue Adequacy"), aff'd sub nom. Association of Am. R.R. v. ICC, 978 F.2d 737 (D.C. Cir. 1992).

12 1988 Railroad Revenue Adequacy, 1990 ICC LEXIS 247, at *4 (noting that predecessor costs had been used in the ICC's revenue adequacy determinations since 1981).

13 1988 Railroad Revenue Adequacy, 1990 ICC LEXIS 247, at *5.

14 1988 Railroad Revenue Adequacy, 1990 ICC LEXIS 247, at *15.

15 1988 Railroad Revenue Adequacy, 1990 ICC LEXIS 247, at *5.

16 1988 Railroad Revenue Adequacy, 1990 ICC LEXIS 247, at *17.

been judicially approved,[17] and the Board adhered to this policy in Koch when it used Koch's $77.2 million valuation as its cost of acquiring the pipeline.[18] Although, as CFI points out, Koch claimed that the $77.2 million figure was not Koch's true acquisition cost, Koch submitted no other figure for its investment base.[19] Kaneb should not be penalized for Koch's failure to present evidence of the true amount of its acquisition cost.

CFI attempts to persuade the Board that because Koch's book costs and acquisition costs were virtually identical, the issue of whether to use predecessor's book costs or purchase price was not explicitly addressed in the Koch order.[20] The Koch decision speaks for itself. As explained above, Koch asserted that the valuation it used for FERC regulatory reporting purposes was not its true acquisition cost, but Koch failed to offer any other valuation figure. Thus, the Board had no choice but to use Koch's regulatory valuation as its acquisition cost in setting the investment base. Nevertheless, the Koch decision clearly affirmed the Board's policy that acquisition cost was the correct measure of investment base. Indeed, the Board stated in Koch: "Acquisition cost valuation – the amount paid in an arms-length transaction – is consistent with 'what other business enterprises use for measuring their investments.'"[21] There was simply no need for the Board to address the issue of whether to use the predecessor's book costs or the purchase price in Koch, given the existing policy of using acquisition cost to determine investment base.

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17 Association of Am. R.R. v. ICC, 978 F.2d 737 (D.C. Cir. 1992).

18 Koch, 4 S.T.B. at 658-59.

19 CF Industries, Inc. v. STB, 255 F.3d 816, 828 (D.C. Cir. 2001). The Board noted that, although under GAAP, purchasers may, upon acquisition, write up or write down assets, as appropriate, to more accurately reflect their value, Koch did not write up the pipeline assets. Koch, 4 S.T.B. at 659.

20 CFI Supplemental Brief at 4.

21 Koch, 4 S.T.B. at 659.

CFI has not presented any valid reasons for reversing the Board's existing policy, which was applied in Koch. Indeed, the only reason CFI has for advocating a radical change in the Board's policy is to keep in place the outdated rates it has been paying for the past 17 years.

Even assuming, arguendo, that CFI had presented any valid reasons for the establishment of a new rule, this proceeding is not the proper forum for making a major change in Board procedures. An agency may not "casually ignore its own past decisions,"[22] but must conform to its prior practice.[23] Further, the Administrative Procedure Act requires public notice, an opportunity for comment, and the issuance of a "concise and general statement of basis and purpose" when an agency wishes to promulgate a new rule.[24] Kaneb has properly relied on the Board's stated rule, which was the basis for the Koch decision, and the Board's August 11 Order requesting additional evidence on Kaneb's $140 million purchase price gave no indication that the Board would be departing from its established precedent. It would be inequitable for the Board to change that policy at this juncture, in a proceeding which is directly related to the Koch decision.

Moreover, such a change would have significant implications for all carriers subject to the Board's jurisdiction and, therefore, cannot be made until after an opportunity for notice and comment by interested parties, as required by the APA. CFI indicates that its proposal would be limited to ammonia pipelines; however, it articulates no reasons why such a limitation should apply, nor can it. Assuming, arguendo, that the reasons CFI sets forth for changing the Board's policy were valid, those reasons would apply equally to rail and other carriers regulated by the

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22 Cross-Sound Ferry Servs., Inc. v. ICC, 873 F.2d 395, 398 (D.C. Cir. 1989).

23 United Mun. Distribs. Group v. FERC, 732 F.2d 202, 210 (D.C. Cir. 1984); Hall v. McLaughlin, 864 F.2d 868, 872 (D.C. Cir. 1989).

24 5 U.S.C. § 553 (2000). See also Pub. Citizen, Inc. v. U.S. Nuclear Regulatory Comm'n, 940 F.2d 679, 681-82 (D.C. Cir. 1991) (stating that a substantive rule requires notice and comment procedures).

Board. Thus, such a policy change would also have to apply to all similarly-situated carriers to avoid being arbitrary and capricious.

B. CFI's Attack on the Prudency of Kaneb's Purchase Price is Irrelevant and Incorrect.

In the guise of "illustrating" why the Board should change its long-standing policy of using acquisition costs to establish investment base, CFI claims that Kaneb paid too much for its ammonia pipeline,[25] in part because its volume and other projections "turned out to be overly optimistic."[26] CFI's criticism of the price Kaneb paid for the pipeline is merely an attempt to distract the Board from the fact that CFI does not and cannot dispute the relevant facts in this proceeding—that Kaneb paid $140 million in an arm's length transaction with Koch for the same pipeline assets that were the subject of the Koch decision. The prudency of Kaneb's purchase is not at issue in this proceeding. At such time as Kaneb issues new rates, CFI will have a full opportunity to challenge the basis of those rates, including the level of Kaneb's investment base.

Moreover, even if the prudency of Kaneb's purchase were at issue here—which it is not—CFI has failed to establish that Kaneb paid an excessive price for the pipeline. The purchase price was the result of arm's length negotiation and Kaneb's reasonable assessment of the pipeline's future performance, based on the data available at the time of purchase. Moreover, the reasonableness of Kaneb's acquisition price is further supported by an independent appraisal that was performed shortly after the transaction was concluded, which indicates that [ ] would be a fair market price for the fixed assets.[27] CFI's attempts to show that Kaneb's decision

25 CFI Supplemental Brief at 1.

26 CFI Supplemental Brief at 7.

27 KNB-00369, attached to CFI's Supplemental Brief in Appendix B.

to purchase the pipeline was uninformed are simply irrelevant and incorrect.[28] Although CFI selectively cites to information in the due diligence documents that could be interpreted in a negative manner, there is ample support in the due diligence documents Kaneb produced to CFI in discovery for Kaneb's assessment of the demand for ammonia and the future performance of the pipeline. For example, documents examined by Kaneb in the due diligence process indicated that [

][29] The pipeline [

][30] Documents also indicate that

][31] In addition,

.[32] Therefore, Kaneb reasonably believed that there was a strong

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28 For example, CFI points to anhydrous ammonia industry data that Kaneb acquired during its due diligence of the pipeline. CFI Supplemental Brief at 9. However, these documents only demonstrate that Kaneb sought the most up-to-date industry information in conducting a thorough due diligence review.

29 KNB-00015, attached to CFI's Supplemental Brief in Appendix B.

30 KNB-00332, attached to CFI's Supplemental Brief in Appendix B.

31 KNB-00329 – KNB-00330, attached to CFI's Supplemental Brief in Appendix B.

32 KNB-00021, attached to CFI's Supplemental Brief in Appendix B. Although this statement and several others were made in Koch documents, in an acquisition, as in all corporate affairs, corporate managers and officers have a duty to provide truthful information, and in due diligence, the buyer or potential buyers may reasonably rely

indication of demand for anhydrous ammonia in the Midwest, and that the pipeline was essential to serve that demand.

In addition, Kaneb's due diligence review indicated that overseas ammonia production was increasing, and, as the only ammonia pipeline with access to U.S. Gulf Coast deep-water import terminals allowing offshore production to flow to the Corn Belt, [

]{33} Kaneb viewed increasing demand for ammonia [

] As the due diligence documents indicate, [

][34]

CFI's gratuitous remark that Kaneb did not understand the law or the issues surrounding the ammonia industry is entirely baseless.[35] Kaneb was well aware of the Koch prescription at the time of the acquisition, as well as the standards for lifting the prescription and the Board's policy of using acquisition cost in revenue adequacy determinations.

Finally, CFI's assertion that Kaneb "knew" it would need to incur pigging costs is irrelevant.[36] In the Koch proceeding, Koch estimated that its future expenditures, including for its smart pig program, would total over $400 million through 2025.[37] Although the Board found such expenses too remote to be considered in 2000, it stated that when Koch implemented its

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on the information provided, subject to confirmation of their own. See generally Securities and Exchange Commission R. 176, 17 C.F.R. § 230.176 (2004). As noted in the various documents produced by Kaneb in discovery, Koch's projections regarding future demand on the pipeline were confirmed by independent documents. Many of these documents were attached to CFI's Supplemental Brief and are cited herein.

33 KNB-00015, attached to CFI's Supplemental Brief in Appendix B.

34 KNB-00022, attached to CFI's Supplemental Brief in Appendix B.

35 Although CFI erroneously claims that "the only discussion of the Koch Order in due diligence fails to even mention the rate prescription," on the very page it cites, KNB-00276, [

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36 CFI Supplemental Brief at 10.

37 Koch, 4 S.T.B. at 662.

plans "to replace, modernize, and maintain the pipeline, it may well have the need and justification for additional revenues" and that the Board stood "ready to promptly lift the rollback and prescription if and when such action should be shown to be necessary."[38] Kaneb has shown that it has implemented those plans, and CFI has not disputed Kaneb's evidence. Therefore, it is now necessary for the Board to fulfill its commitment and lift the rate prescription it imposed in Koch.

C. The STB Should Disregard CFI's Revenue Adequacy Presentation.

The Board should disregard CFI's revenue adequacy presentation. CFI's assertions to the contrary, a revenue adequacy determination is neither appropriate nor necessary in this proceeding. Neither the Board's governing statute or regulations nor Board precedent requires the lengthy evidentiary procedures required for prescribing rates when vacating a prior prescription and returning ratemaking initiative to the carrier.[39] Furthermore, the Board's August 11 Order did not direct Kaneb to submit the type of evidence required in rate challenge proceedings for the Board to make a revenue adequacy determination, and Kaneb has not submitted such evidence.[40] As CFI fully acknowledges, this is not a rate proceeding.[41]

In addition, CFI admits that its revenue adequacy presentation is based on "book costs,"[42] which, as discussed above, is contrary to long-standing Board precedent that uses acquisition costs as the appropriate measure of investment base in a revenue adequacy determination.

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38 Koch, 4 S.T.B. at 662.

39 San Antonio, Texas, 1981 ICC LEXIS 78, at *20-21.

40 Kaneb submitted evidence for illustrative purposes demonstrating that, as a result of materially changed circumstances, Kaneb's return on investment would be significantly lower than the return on investment upon which the Koch prescription is based, and to give the Board an idea of revenues on the pipeline for the period in which Kaneb has owned the pipeline.

41 CFI Supplemental Brief at 6 n.12.

42 CFI Supplemental Brief, Appendix A, Supplemental Verified Statement of Thomas W. Carlton at 7.

Therefore, CFI's revenue adequacy presentation should be entirely disregarded. For these reasons, it is unnecessary for Kaneb to discuss in detail any other flaws in CFI's revenue adequacy presentation; however, this should not be interpreted as a concession on Kaneb's part that any portion of the analysis is accurate.[43]

IV. CONCLUSION

Kaneb has demonstrated that the factual underpinnings of the Koch decision are no longer valid. CFI has not contested Kaneb's evidence. Instead, CFI urges the Board, without any reasonable basis, to adopt a new policy for setting the investment base in revenue adequacy determinations. This misplaced and unfounded plea should be disregarded by the Board. Therefore, the Board should lift the rate prescription which has frozen rates for 17 years and restore ratemaking initiative to Kaneb to enable it to earn a reasonable return on its investment.

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[43] For example, CFI's analysis [

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WHEREFORE, in consideration of the above and foregoing, Kaneb respectfully requests that the Board:

1. Lift the prescription it imposed in CF Industries, Inc. v. Koch Pipeline Company, L.P. and restore ratemaking initiative to Kaneb; and

2. Grant Kaneb such additional relief as the Board deems proper.

Respectfully submitted,

Kathrine L. Henry

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Kaneb Pipe Line Operating Partnership, L.P.

Dated: February 18, 2005

CERTIFICATE OF SERVICE

Pursuant to Rule 1104.12 of the Surface Transportation Board's Rule on Service of Pleadings and Papers, I hereby certify that I have this day served a copy of the foregoing document by hand delivery upon all parties of record in this proceeding.

Dated at Washington, D.C., this 18th day of February 2005.

Kathrine L. Henry

Kathrine L. Henry